Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:SCA:LN:TL-N-5803-99
JSHargis

date: September 30, 1999

to: Taxpayer Advocate Office--Lois Kemerer
Southern California District

from: District Counsel, Southern California District, Laguna Niguel

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subject: **Date of Innocent Spouse claim made by** [redacted]

DISCLOSURE STATEMENT

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This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

ISSUE

As of what date should the taxpayer be treated as having filed her claim for a refund based on an assertion of the innocent spouse defense?

CONCLUSION

Although the facts do not provide a basis for a definitive conclusion, it is likely that a court would hold that the [redacted] letter from the taxpayer constituted an informal claim for refund and that the formal claim raising the innocent spouse defense should be treated as having been filed on

that date.

FACTS

The taxpayer, [redacted], filed joint returns with her husband, [redacted], for [redacted], [redacted] and [redacted]. Those returns were examined and deficiencies were assessed based on unreported income earned by her husband. The taxpayer and her husband have apparently separated but did not divorce.[1]

During the early [redacted]'s the taxpayer claimed refunds on several of her returns. She did not receive the refunds. Instead, the refunds were applied to the outstanding deficiencies for [redacted] and [redacted]. The taxpayer apparently wrote to the [redacted] Service Center about her withheld refunds on [redacted]. The materials given to District Counsel do not include a copy of this letter and it appears to be lost. The file does contain, however, a letter from the Service Center to the taxpayer dated [redacted], which acknowledges receipt of the [redacted], letter. This letter does not appear to be a formal notice of claim disallowance.

The file also contains a second letter sent by the taxpayer to the Service Center on or about [redacted]. This letter protests the perceived unfairness of collecting the entire tax debt from one spouse. The taxpayer asserts in the letter that her husband physically and mentally abused her, that the unreported income items were earned solely by her husband, and that she did not know of the items when she signed the return. She also asserts that she is unable to collect from her husband and that the collection of the tax from her has caused her hardship.

On [redacted], the taxpayer filed a Form 8857 with the Internal Revenue Service claiming innocent spouse relief. In a subsequent letter to the Service, dated [redacted], the taxpayer stated that she had never heard of innocent spouse relief until reading of it in a newspaper article dated [redacted].

The materials forwarded to Counsel include two transcripts for this taxpayer, one for [redacted] and one for [redacted]. The entire liability for [redacted] appears to have been paid prior to [redacted]. It appears that the taxpayer still owed $[redacted] for her

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[1]The taxpayer says that she is not able to locate her husband. A search of an electronic database revealed an address: [redacted]. We do not know if this address is accurate or current.

[redacted] year as of [redacted].

LAW AND ANALYSIS

I.R.C. § 6511(a) provides generally that where a return is required, a claim for refund must be filed within three years from the time the return was filed or within two years from the time the tax was paid, whichever period expires later. If no return is filed, the claim must be filed within two years from the time the tax was paid. Returns were filed in this case, and it appears that more than three years elapsed from the filing date before any claim for refund was filed. Thus, the taxpayer is able to pursue her refund claim only to the extent that she made payments within the two years prior to the filing of the refund claim.

The taxpayer did not file a formal claim until [redacted] which date is more than two years after most of the payments were made in this case. Thus, the taxpayer's claim for refund will be time barred unless the statute was tolled by an earlier, informal claim. Thus, the issue appears to be whether or not the [redacted] letter can be considered an informal claim.

Informal claims for refund have long been recognized as a valid claims, which toll the limitation period. New England Electric Systems v. United States, 32 Fed. Cl. 636, 641 91995). An informal claim for refund "must have a written component and should adequately apprise the Internal Revenue Service that a refund is sought and for certain years." United States v. Commercial National Bank of Peoria, 874 F.2d 1165, 1171 (7th Cir. 1989). The specific legal formulations of the claims need not be made. American National Bank and Trust Co. v. United States, 594 F.2d 1141, 1143 n.1 (7th Cir. 1979). An informal claim is adequate if it furnishes sufficient information to allow the Service to make a reasonable and intelligent investigation and evaluation of the taxpayer's claim. Id.

Even though the original [redacted] letter has been lost, it will be impossible for the Service to deny its existence or its receipt, given that the Service replied and specifically referred to the letter. The letter was in writing, and it can be surmised from the Service's response that the letter dealt with the retention of the taxpayer's later refunds so that they could be applied to the liability for [redacted] and [redacted]. Although the letter did not, based on the taxpayer's later statements, mention the innocent spouse defense, it could still toll the limitation period for the filing of a proper claim if it simply provided the Service with sufficient notice that a refund was sought for a certain tax year. Gallo v. United States, 950 F. Supp. 1246

(S.D.N.Y. 1997).

Because the letter has been lost, it is impossible to say that it did or did not provide notice that a refund was sought. The second letter, dated [redacted], does not state that a refund was sought, but this alone does not preclude the possibility that the first one did. A trial court, as the finder of fact, could easily find that the first letter did request a refund and thus did constitute an informal claim. The only evidence of the contents of the letter would be the taxpayer's testimony and the Government would have no evidence to rebut her testimony. If her [redacted] letter is treated as an informal claim, then the later formal claim and the arguments raised in it will be considered as having been made on that date. Thus, it will be necessary to consider her innocent spouse claim and there have been recent changes to the law regarding the innocent spouse defense.[2]

I.R.C. § 6013(e) was repealed by § 3201(e)(1) of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA98), Pub. L. No. 105-206, effective for all liabilities arising after July 22, 1998, and liabilities arising before July 22, 1998, that were unpaid as of that date. Old § 6013(e) still applies to liabilities arising before the date of enactment that were paid as of July 22, 1998. New § 6015 applies to liabilities unpaid as of that date. In cases where part, but not all, of the liability was paid as of July 22, 1998, § 6015 relief is available for the unpaid portion (i.e., the issue is subject to bifurcation).

The taxpayer still owed $[redacted] with regard to her [redacted] year as of the effective date of § 6015. Thus, the new statute should apply to her to the extent of that amount. The disposition of the remainder of the disputed amounts should be determined under old § 6013(e).

To qualify for relief from joint and several liability under the old law, a joint return filer had the burden of proving that all of the following statutory requirements were met:

(1) a joint return was filed for the taxable year;

(2) the joint return contained a substantial understatement

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[2] The Service apparently did not send the taxpayer a formal notice of claim disallowance, therefore the two year limitations period for filing a refund suit in District Court under § 6532(a) never began to run. The taxpayer can still bring an action, and we must therefore consider the claim.

of tax attributable to a grossly erroneous item of the other spouse (substantial means in excess of the greater of $500 or a specified percentage of the innocent spouse's adjusted gross income for the most recent year);

(3) the taxpayer did not know, and had no reason to know, of the substantial understatement when he or she signed the joint return; and

(4) it would be inequitable to hold the taxpayer liable for the deficiency in income tax attributable to such substantial understatement.

Section 3201(a) of RRA98 added new § 6015. Section 6015 expands the former innocent spouse protection contained in § 6013(e). Section 6015 provides three types of relief from joint and several liability to spouses who filed a joint return. The relief provisions of § 6015 are found in §§ 6015(b), (c), and (f).

For relief under § 6015(b) the taxpayer must meet a test similar to that under old § 6013(e). Under the new test, however, the item need not be grossly erroneous--mere erroneousness will do--and the understatement need not be substantial. In addition, actual knowledge of the item giving rise to the deficiency does not preclude all relief. The taxpayer can still obtain innocent spouse relief to the extent that he or she can prove ignorance of the amount of the item.

Under new § 6015(c) a taxpayer who is separated from his or her spouse may simply elect out of joint and several liability. An individual shall be eligible to elect relief under § 6015(c) if:

1. A joint return was filed;
2. The deficiency on the return is allocable to the nonelecting spouse; and
3. At the time the election is filed the individual was:
    a. no longer married to (divorced or widowed);
    b. legally separated from; or
    c. was not a member of the same household as the individual with whom such joint return was filed at any time during the 12 month period immediately before the election was filed.

An individual meeting the above requirements will not qualify for relief if the Service demonstrates that such individual had actual knowledge of the items of the nonelecting spouse giving rise to the deficiency at the time they signed the joint return. Please note that it is the Service that has the burden of proof

on this exception.

New § 6015(f) provides for general equitable relief. To qualify for § 6015(f) relief a spouse must meet the following threshold requirements:

1. A joint return was filed;
2. Relief under §§ 6015(b) and (c) is unavailable; and
3. It is inequitable to hold the individual liable for any unpaid tax or any deficiency (or portion of either).

This third form of relief seems designed primarily to apply to situations that Congress did not foresee in drafting the first two provisions.

CONCLUSION

It will be difficult for the Service to prevail on the issue of whether or not the [redacted] letter constituted an informal claim for refund. We suggest considering the taxpayer's claim as if it had been filed on that date. Her claim will have to be bifurcated and considered under both old § 6013(e)--as to the amounts paid before July 22, 1998--and new § 6015--as to the amounts unpaid on July 22, 1998.

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